4. NewEnergy's Position

By way of introduction, NewEnergy says, in its verified comments, that the ComEd filing presents the Commission with an opportunity to forward the cause of competition in ComEd's service territory and the State of Illinois. NewEnergy's objective in seeking approval of an index based tariff is that a fully appropriate index tariff be placed in operation. NewEnergy supports approval of the methodology advanced by ComEd in its Petition; however, NewEnergy does not support use of ComEd's proposed methodology for periods beyond May, 2001. (NewEnergy Comments at 1 to 4)

According to New Energy, as competition unfolds under the Electric Service Customer Choice and Rate Relief Law of 1997, NewEnergy and others have provided significant savings to electricity customers throughout ComEd's service territory by utilizing direct (procurement of wholesale supply) and indirect supply alternatives (assignment of the Power Purchase Option); however, the ability of energy marketers to provide additional savings to even more customers is threatened by the operation of the Market Values that result from the NFF process and the existing Rider PPO-NFF that incorporates power and energy prices based on the NFF Market Values. New Energy says the NFF Market Values are below the cost of serving those customers and are far below those for the summer season, and that without regulatory changes that rectify this serious imbalance, the ability for customers to receive electricity savings from alternate suppliers greater than otherwise available from ComEd under Rider PPO-NFF will be impaired and competition will stall.

NewEnergy believes action by the Commission on an expedited basis approving an appropriate replacement for the NFF in the form of a market based index tariff will prevent a "nearly complete re-monopolization" of retail electric service only eight months after the first ARES flowed competitive wholesale power on behalf of its customers on October 1, 1999. NewEnergy considers approval of an "interim alternate-market based index" to be substantial progress on the road to full and fair competition in ComEd's service territory. (Id. at 2)

With regard to the timing of this application, NewEnergy contends that without action by the Commission prior to the summer supply period, savings to delivery service customers will be limited to the minimum level which the Act provides via the mitigation factor. (Id. at 5-6) In NewEnergy's view, absent approval of the index and related transition mechanisms, virtually all current delivery service customers will move or be moved to the PPO. NewEnergy says the NFF market values are well below actual summer season market prices and therefore the CTCs are far higher than they should be, and that as a result, customers will be trapped without access to savings greater than those available under Rider PPO-NFF. (Id.)

NewEnergy next states that ARES have entered the market to provide savings greater than or equal to the PPO. (Id. at 7) NewEnergy believes the transitional mechanisms in the proposed tariff as well as the index itself, by reducing the CTC and increasing Market Values to levels more in line with the actual market, present the opportunity for more of the customer's energy dollars to be in the contestable market place, thus providing the potential for savings above the minimum.

NewEnergy also contends that ComEd's petition improves upon a previous request for approval of a market based index in several ways (Id. at 8-9), such as:

- use of an index that is "into ComEd" rather than an index based on the Cinergy futures contract plus a "basis differential."
- better representation of the large seasonal differences in market prices for power and energy; and
- adjustment of the index, though not as completely as necessary, to recognize the cost of serving volatile hourly retail loads.

NewEnergy next argues that while ComEd's proposal is a step in the right direction, there are several issues that need to be addressed before a permanent solution is established. In this context, NewEnergy claims ComEd's proposal does not adequately reflect the fair market value of serving retail for the following reasons, among others:

1. relying excessively upon historic off-peak M.A.I.N. prices from periods prior to open access as a basis for calculating off-peak forward market values of energy;
2. relying solely on 1999 historical PJM price data for price shaping and 1999 historical ComEd load data for load shaping a purportedly "forward" looking market index;
3. utilizing on-peak forward prices from non-regulated reporting services which appear to include prices from a limited number of actual transactions that may not represent transactions associated with serving retail load, may not reflect a liquid market, may not be at arm's length, and may not be of the size ordinarily associated with serving retail customers; and
4. failing to provide any adjustment for the uncertainty and variability associated with serving retail electric load.

NewEnergy also argues that approval of ComEd's proposal should be followed by Commission sponsored workshops to consider potential deficiencies with the index-methodology in ComEd's proposal. (Id. at 11-12) NewEnergy also says ComEd is aware that NewEnergy and others do not support the use of the proposed methodology beyond May, 2001 – the period through which ComEd has also agreed to make available a default service with wholesale prices equal to those resulting from the proposed methodology.

With respect to whether the ComEd proposal will provide additional opportunities for savings to customers (Id. at 12 to 22), NewEnergy believes that absent action by the Commission, those opportunities will diminish or be non-existent as all existing delivery service customers will be served by ComEd under Rider PPO-NFF. NewEnergy says this "complete re-monopolization" of the market is inconsistent with the objective of deregulation to promote sustained competition. (Id. at 12)

With respect to other parties' criticisms of the ComEd petition, NewEnergy says there are ways to address these concerns while at the same time moving ahead on the index in order to avoid re-monopolization. According to NewEnergy, if the index proposed in the Petition is seen as an interim improvement in the competitive opportunities available for customers, then flaws can be remedied in the near future based on experience, just as the proposed index is a reflection of improved knowledge based on experience over the past year. (Id. at 13)

NewEnergy next addresses certain criticisms it says were raised by IIEC regarding ComEd's proposed market value methodology. NewEnergy believes two of these concerns have some merit, but should not stand in the way of expedited approval of the petition. Instead, NewEnergy argues, these concerns should be the subject of further attention and possible modifications to the market value methodology in the future. One such concern is that ComEd's proposal "gives equal recognition to not only the value ComEd can <u>sell</u> electricity but also the value ComEd can <u>buy</u> electricity." NewEnergy says providing equal recognition results in the proposed market values being well below "the value of the freed-up electricity that ComEd can sell." (NewEnergy comments at 14-15) The second is that ComEd's proposed index methodology "also provides equal recognition to the value ComEd <u>buys</u> power and energy for in the peak and off-peak period, thereby artificially depressing its proposed Market Values," which in turn results in ComEd's transition charges being artificially inflated. (Id. at 16-17) In this context, NewEnergy describes potential modifications that might be considered in the future, which NewEnergy says would "raise on-peak prices as they are set too low," and "raise off-peak prices as they are set too low." (Id. at 17 to 20)

NewEnergy believes that after approval of an alternate methodology, the Commission may want to consider modifications to that methodology as a result of the workshop process or otherwise. Significantly, NewEnergy's support for the proposed index is itself limited to the period through May, 2001 – the point through which ComEd has agreed to provide a default wholesale service to ARES serving retail load. (Id. at 26) NewEnergy's support for the Petition on an interim basis is dependent upon

ComEd's willingness to make available wholesale power and energy through a default service through May, 2001 in the event the Petition is approved.

NewEnergy also believes the workshop process to be essential in further understanding and identifying fully other deficiencies in any index methodology that receives the Commission's approval on an expedited basis. As those deficiencies are better understood by parties such as ComEd, NewEnergy says the Commission can require further modifications to the index methodology as part of the Commission's continued supervision of ComEd, and that such modifications may include revisions in the market value calculation or – for periods beyond May, 2001 – a revised default service.

NewEnergy further suggests that in order to improve the prospects for competition in ComEd's service territory and also allay the concerns advances by other parties in this case the Commission should craft a solution that approves the Petition and allows for improvements to the index methodology over time. Specifically, NewEnergy recommends the Commission adopt an order in response to the Petition that: (1) approves an alternate market based index in the form submitted by ComEd with any limited modifications deemed reasonable by the Commission; (2) sets a time schedule for initiation and completion of workshops regarding the sufficiency and inadequacies of any index methodology that is approved; (3) provides that continued availability of any index methodology remains subject to Commission jurisdiction and modifications consistent with the public interest; (4) establishes that if at any time before January 1, 2001 ComEd does not agree with modifications to the index recommended by the Commission, ComEd will be required to revert to the market values derived by the Neutral Fact Finder for transition charges and Rider PPO effective January 1, 2001; and (5) conditions continued availability of use of the alternate index methodology upon ComEd making available wholesale power and energy to energy marketers serving retail customers at a price equal to the market value calculation. NewEnergy believes that adoption of such an order appropriately balances the necessity for action to preserve competition under the current situation and the need for improved long-term cooperation by ComEd in the design and operation of alternates to the NFF process. (Id. at 27-28)

D. Exceptions and Replies

As explained more fully below, the Hearing Examiner's Proposed Order found that ComEd should be authorized to implement its proposed market index based tariff, subject to certain related modifications. Under the first modification, referred to and supported by some parties as a "sunset provision," ComEd's proposed market based tariff would remain in effect only through the May 2001 billing period. Second, customers who choose to continue to pay CTCs based on the current NFF based tariff would not be required to switch to the market index based tariff on December 31, 2000 as proposed by ComEd. Finally, under ComEd's proposal, after the effective date of Rider PPO-MI, no customer would be allowed to begin taking service under Rider PPO-

MFF, and this restriction was removed by the HEPO. Exceptions to the proposed order, with suggested replacement language, and replies thereto, were filed by a number of parties, and are summarized below.

1. Exceptions filed by ComEd and Unicom Energy; Replies Thereto

ComEd filed certain exceptions to the proposed order, along with suggested replacement language. In its exceptions, ComEd first takes issue with the proposed modifications which the HEPO recommends be made to ComEd's proposal.

According to ComEd, the most serious error is the HEPO's failure to provide for the prompt phase-out of the NFF based market values. ComEd says the HEPO's requirement that ComEd simultaneously offer PPO prices and CTCs based on inconsistent market index and NFF methodologies would send improper and confusing price signals to customers and suppliers, delay efforts to transition to more accurate market-based prices, and stymie efficient and effective competition. ComEd claims no party supported this approach in its written comments. ComEd also says maintaining two methods of determining market value is inconsistent with Section 16-112 of the Act. ComEd also states that it cannot accept this approach and, if it were adopted, ComEd would not implement the market index tariffs. In ComEd's view, the phase-out of Rider PPO-NFF as proposed by ComEd must be restored if the proposal is to be both beneficial to the market and acceptable to ComEd under Section 16-112(m) of the Act. (ComEd exceptions at 2 to 5)

ComEd also argues that the proposed market-index tariff should not automatically "sunset" in one year. ComEd says the parties sought a market-index methodology to better align seasonal market values with actual market prices, and that RESs and utilities alike will wish to plan based upon the knowledge that they will have a real market-based price. While tariff improvements may or may not be required, Edison believes that there is no reason to provide for an "automatic" retreat to the NFF. According to ComEd, although it cannot agree to a sunset provision, it would agree to revise its Rider PPO-NFF to provide that it will become available again to customers after the May 2001 billing period if Rider PPO-MI is discontinued.

ComEd also takes exception with determinations in the proposed order regarding certain modifications to the transition provisions which were proposed by MEC and CMS Marketing and accepted by ComEd, and to language regarding Staff's analysis. These exceptions are addressed immediately below in this order and in the discussion of Staff's Position contained elsewhere in this Order.

In its replies to exceptions, IIEC responds to ComEd's objection to the sunset of Rider PPO-MI. IIEC says that in doing so, ComEd asks the rhetorical question: "Once a viable market-index process is established, why go back?" In IIEC's opinion, the question ComEd should have asked is: "Until a viable market-index process is established, why go forward?" IIEC asserts that the record in this case, such as it is, establishes that ComEd, for all intents and purposes, is the market on the Altrade and Bloomberg internet trading services for the into ComEd hub, and that this is not a viable *market-index. (IIEC reply to exceptions at 4) On this point, the Commission Staff* comments, "Apparently, ComEd is not paying close attention to other voices in this proceeding; there is scant support for the notion that 'a viable market-index process' has been established." (Staff reply to exceptions at 2)

In its replies to exceptions, IIEC also responds to comments by ComEd that simultaneous implementation of both PPO and NFF rates is administratively unworkable. According to IIEC, ComEd ignores the fact that ComEd itself has proposed the simultaneous implementation of both PPO and NFF rates during the transition from Rider PPO-NFF to Rider PPO-MI. (IIEC reply to exceptions at 5) On this point Staff states that ComEd itself offered to provide PPO-NFF during a transitional period through December 31, 2000. (Staff reply to exceptions at 2)

In its reply brief on exceptions, Enron claims Edison's objections to the modifications contained in the proposed order now has guaranteed that the Commission cannot see this proceeding through to a successful resolution. Enron says that while failing to address the substantive flaws in Edison's proposal, the proposed order recommended a solution that would have allowed Edison to prove that its PPO-MI proposal was not the disaster described by its critics, by allowing Edison's PPO-MI proposal to operate side-by-side with its existing PPO-NFF tariff, allowing customers to choose which was "the better deal." Enron adds, "But Edison has said that it is unwilling to allow such a real world comparison to occur, indicating that it would prefer to have no solution at all rather than accept the solution recommended in [the] Proposed Order."

In Enron's view, because the Commission cannot mandate that Edison accept changes to the proposal, Edison has guaranteed that the Commission has no choice but to set aside Edison's petition. According to Enron, "Edison has ensured that the Commission would be placed in this impossible predicament and has not tried to help the Commission find a workable solution, [and] the Commission should not now allow Edison to strong-arm the Commission into accepting Edison's unjust and unreasonable proposal." (Enron reply to exceptions at 4) Enron, in its reply to exceptions, says that even though opponents to Edison's proposal have been procedurally hamstrung, as time passes and parties comment, the luster has faded off of Edison's proposal.

In its exceptions, ComEd also says the Commission should enter an interim order approving the proposed tariff revisions with the modifications submitted by MEC and CMS Marketing *and the modification stated below:*

> The Commission directs ComEd to work with the Commission Staff to better define the report to be filed at the end of the year, and directs its Staff to schedule additional workshops on the operation and development

of market index proposals to begin in the fall of 2000. A hearing, if necessary, on the market-index tariffs approved herein, will be set by the Commission for early 2001 to allow for a final order by April 2001. Finally, the Commission will require ComEd to modify its proposed tariffs to provide that its Rider PPO (NFF) will again become available to customers following the May, 2001 billing periods if Rider PPO (MI) is no longer in effect at that time.

In its reply to exceptions, CILCO states that it does not support the suggestion by ComEd that the Commission enter an interim order. According to CILCO, with the granting of an interim order, Period B market values would go into effect which will likely disadvantage customers selecting delivery services in that the market value for Period B will create exceptionally high customer transition charges which will strongly discourage any customer from leaving ComEd supply from September 2000 to May 2001. Consequently, CILCO claims, there will be very little if any customer switching during this period.

On another point, ComEd also contends the order should specifically state that the schedule adopted by the Commission and the Hearing Examiner is fully consistent with the requirements of Sections 16-112 and 9-201 of the Act, and with the requirements of the Administrative Procedure Act. In Edison's view, contrary to some parties' suggestions, neither Illinois law nor constitutional due process requires the Commission to hold a full-blown rate-case-type hearing, with several rounds of discovery, several rounds of briefs, and a trial-type evidentiary hearing, in every proceeding. ComEd asserts that under Section 9-201 of the Act, the Commission could have permitted ComEd's rate to go into effect without any proceeding whatever. Under the unique circumstances of this case, ComEd believes the procedures adopted by the Commission and the Hearing Examiner provided parties with an adequate opportunity to be heard and present their views and evidence.

In response to this argument by ComEd, IIEC argues that because ComEd has utterly failed to provide any reliable legal authority to support the process it fathered in the case now before this Commission, its position on this issue should be rejected, along with its recommended changes to the proposed order. (IIEC reply to exceptions at 9)

In its exceptions, Unicom Energy agrees with various exceptions filed by ComEd.

2. MEC's and CMS Marketing's Proposed Modification which ComEd does not Oppose

As previously discussed in this order, MEC and CMS Marketing indicate that each has reached the same negotiated agreement with ComEd. They indicate that ComEd and each of these parties would be willing to accept a Commission proposed modification to ComEd's original proposal that is consistent with the modifications discussed in the filings of these parties.

The HEPO noted that the "negotiated agreements" between ComEd and these two parties had not been reviewed by the other parties to this proceeding and these other parties have had no opportunity to comment on the provisions of the "negotiated agreements." In addition, the HEPO noted that neither MEC nor CMS Marketing either explained the purpose of the proposed modification or why the proposed modification should be adopted.

In its exceptions, MEC says the negotiated agreement extends the time period that all new customers will have for selecting to choose the power purchase option service under the neutral fact finder process. MEC provided replacement language that would adopt the negotiated agreements between ComEd and MEC and CMS Marketing. PE Services, in its exceptions and reply indicates strong support for the MEC and CMS Marketing transition proposal because, according to PE Services, the liberalized transition provisions benefit customers.

Both ComEd and Unicom Energy, in their exceptions, indicate their support of the negotiated agreements with MEC and CMS Marketing.

CMS Marketing, in its exceptions, states that rejection of the negotiated agreement becomes moot because the modification adopted at page 26 of the HEPO effectively provides the protection sought by CMS Marketing. CMS Marketing states that so long as the order states that any customer that does not benefit from Rider PPO-MI will have the option to utilize Rider PPO-NFF, it would not take exception to the rejection of the negotiated agreement. In response to ComEd's statement in its exceptions that it would not implement Rider PPO-MI if the Commission adopted the proposed modification on page 26 of the HEPO, CMS Marketing says that it does not object to the Commission withdrawing this proposed modification, so long as it proposes to implement the negotiated agreement between ComEd and CMS Marketing in its place. Similarly, in its reply to exceptions, Nicor Energy recommends that the Commission adopt the MEC and CMS Marketing negotiated agreement.

In its reply to exceptions, Staff recommends that the negotiated agreements be adopted by the Commission. Staff asserts that the proposed changes specified in the agreement would harm no party. (Staff reply to exceptions at 4-5)

In light of its conclusion that ComEd must continue to provide Rider PPO-NFF, discussed further below, the Commission concurs with the position contained in the exceptions of CMS Marketing that there is no need to reach a conclusion on this issue because it is moot.

3. Parties Supporting a Sunset Provision or other Modifications

a. NewEnergy's Exceptions

In its exceptions, NewEnergy states that ComEd's proposal should be approved, with certain modifications. In that regard, NewEnergy comments on what it refers to as the HEPO's proposed modification limiting the application of ComEd's proposed tariff "via an automatic expiration date of May 2001." NewEnergy supports the use of such a "sunset provision" or "automatic expiration date" as a means of requiring ComEd to maintain an accurate and fair market value calculation. NewEnergy asserts that the order should go even further, and include additional mechanisms for assuring that the accuracy of market value calculations. (New Energy exceptions at 1-2)

One such recommendation is that the order include a mechanism allowing for revisions to the proposed methodology that the Commission deems appropriate after a 30 day notice and comment procedure by interested parties. In the event ComEd does not agree to the recommended revisions, NewEnergy proposes that ComEd shall inform the Commission that it will instead elect to utilize the market value calculation provided by the NFF as of January 1, 2001. (Id. at 8-9)

In NewEnergy's view, the Commission's order should also set a time schedule for initiation and completion of workshops regarding the sufficiency and inadequacies of any alternate methodology that is approved; provide that continued availability of any alternate methodology remains subject to Commission jurisdiction and modifications consistent with the public interest; establish that if at any time before January 1, 2001 ComEd does not agree with modifications to the methodology recommended by the Commission, ComEd will be required to revert to the market values derived by the Neutral Fact Finder for transition charges and Rider PPO effective January 1, 2001; and condition continued availability of use of the alternate methodology upon ComEd making available wholesale power and energy to energy marketers serving retail customers at a price equal to the market value calculation. (Id. at 13-14)

NewEnergy believes that adoption of such an order appropriately balances the necessity for action to preserve competition under the current situation and the need for improved long-term cooperation by ComEd in the design and operation of alternates to the Neutral Fact Finder process. (Id. at 13-14)

In its reply to ComEd's exceptions, NewEnergy says "the Commission should adopt an Order providing that Rider PPO (MI) is approved on an expedited interim basis (along with any Commission required modifications) and is expressly subject to discontinuance and a return to Rider PPO (NFF) as of January 1, 2001 should the Commission propose – and ComEd reject after notice and comment by interested parties – modifications to Rider PPO (MI) at any time." (NewEnergy reply to exceptions at 2)

NewEnergy refers to language which was contained in that portion of ComEd's exceptions suggesting that the Commission issue an interim order in this proceeding.

This ComEd language would provide in part for a hearing if necessary to be set by the Commission for early 2001 to allow for a final order by April 2001. NewEnergy states in part, "Presumably, ComEd anticipates – since it also suggests in its revisions to the Proposed Order that the Commission's Order not be considered a 'final' order – that Docket No. 00-0259 remain open thereby allowing for a hearing, if necessary, and the discontinuance of Rider PPO (MI) when appropriate." (NewEnergy reply to exceptions at 5)

In it reply to exceptions, NewEnergy also states its support of the proposed tariff modification submitted by MEC and CMS Marketing, and supported by ComEd, as discussed elsewhere in this section of the order.

b. Staff, Sieben Energy, Nicor Energy, CILCO and PE Services

In its exceptions, Staff states that it is not opposed to the conclusions of the HEPO that place a sunset date of May 31, 2001 on ComEd's authority to implement Rider PPO-MI (and its associated CTCs) and that leave Rider PPO-NFF (and its associated CTCs) in effect beyond December 2000. Staff says it believes these recommendations fairly balance the interests of the parties and prudently guard against the potential shortcomings of ComEd's proposed market index. Staff's other exceptions, regarding the HEPO's treatment of Staff's presentation are addressed above in the Section of the Order entitled "Staff's Position."

Sieben, in its exceptions recommends approving ComEd's market-based alternative with a sunset provision. Sieben also recommends that the Commission include an ordering paragraph in the order that states that the order pertains to Commonwealth Edison Company's market-based alternative tariff only and should not be used as precedent in cases pertaining to market-based pricing in the future.

Sieben also recommends that the Commission include an ordering paragraph that explicitly finds that a sunset date of May 2001 is a modification to ComEd's proposed tariff. Finally, Sieben recommends that the finding and ordering paragraphs be amended to state that the Commission will initiate a new docket within 30 days of the conclusion of this proceeding to investigate market-based pricing methodologies to fully examine the appropriate procedures and methods to establish market-based pricing in Illinois. In its reply, Staff opposed Sieben's recommendation for the Commission to launch a proceeding to fully examine market-based pricing methodologies. In Staff's view, the Commission should not launch such proceedings without a practical purpose.

Nicor Energy's exceptions indicate that it supports the sunset provision contained in the HEPO. In its reply to exceptions, also discussed elsewhere in this order, Nicor Energy recommends that the Commission adopt the HEPO with the following modifications: 1) remove the language that specifies that the PPO-MI and

PPO-NFF be offered simultaneously through May 2001; 2) adopt the sunset provision that requires workshops and a new docket, if necessary, to perpetuate Rider PPO-MI as written, or with appropriate modifications; 3) adopt the changes to ComEd's original filing consistent with the issues identified by MEC and CMS Marketing; and 4) enter a notice of rulemaking.

In its reply to exceptions, PE Services recommends that the Commission: 1) exclude the HEPO requirement that ComEd keep its Rider PPO-NFF in place indefinitely; 2) include language supporting the MEC-CMS Marketing transition proposal; 3) retain the HEPO requirement that Rider PPO-MI include a May 2001 sunset provision; and 4) include language stating it is an interim order and establishing a schedule for reviewing and modifying the ComEd Rider PPO-MI by May 2001.

As noted above, CILCO also recommends that if the index proposed by ComEd is approved, a one-year "sunset" provision be incorporated in the Commission order. CILCO claims that this provision would enable further analysis, examination and understanding of the Market Index and its applicability as a long-term solution to the Neutral Fact Finder process.

4. Parties Opposing ComEd's Proposal

a. IIEC's Exceptions

In its exceptions, the IIEC argues that ComEd's proposal should be rejected. IIEC notes that it and other parties previously requested that the ComEd schedule be rejected and that a "reasonable schedule accommodating discovery, preparation and filing of direct and rebuttal testimony, cross-examination of witnesses and briefing be established". (IIEC exceptions at 1-2) According to IIEC, under the circumstances, the Commission should "find it impossible to approve a tariff which it may not be able to subsequently modify as circumstances warrant on less than 45 days notice and over the significant due process objections raised by many parties in this proceeding." (IIEC exceptions at 11)

Regarding the 45 day notice requirement in Section 9-201, IIEC urges the Commission to find, "To the extent this issue is before the Commission, the Commission finds, based on the record in this proceeding, there has been no good cause shown to justify the Commission's expedited treatment and waiver of the 45 day notice requirement in this matter."

IIEC says that if the Commission chooses not to reject ComEd's proposal at this time, and wishes to consider the proposal on something other than an "expedited" basis, then the proposed order should become, in effect, an "interim order" and be modified in the manner described by IIEC. In this regard, the IIEC believes the Commission should acknowledge the validity of the arguments raised by IIEC and others and direct that a schedule be established for the consideration of the Company's proposal which will allow parties adequate time for full and complete discovery and presentation of direct and rebuttal testimony, the cross-examination of witnesses and the preparation and filing of briefs in order that the Commission may act upon the Company's proposal by November 1, 2000. (Id. at 7-8)

In its reply to exceptions, ComEd asserts that the schedule adopted in the unique context of this proceeding satisfied both statutory procedural requirements and constitutional due process standards. ComEd says it recognizes, however, that the issues in this docket will remain controversial, even if the Commission gives approval to ComEd's proposal. ComEd says that it is for that reason, if the Commission believes further investigation is necessary, ComEd suggested in its Brief on Exceptions that the Commission approve the market index alternative in an interim order, direct ComEd to file a report at the end of the year, and schedule workshops beginning in the autumn of 2000. The Commission could then, according to ComEd, provide for a hearing in early 2001 in order to allow for a final order in April, 2001. (ComEd reply to exceptions at 15) These comments contained in ComEd's reply to exceptions are intended to respond to all parties that complained about the procedural schedule used in this proceeding, including IIEC, Enron and the AG.

IIEC also argues that if the Commission, in spite of IIEC's objections, decides it will implement ComEd's approach at this time, it should not do so without the modifications to that proposal set forth in Part IV of the Hearing Examiner's Proposed Order. While IIEC does not believe these modifications fully address the concerns it raised about ComEd's proposal, it says adoption of all of the modifications made in the proposed order would be vastly superior to the adoption of ComEd's proposal without such modifications, or with only some of the modifications. If the Commission determines that it cannot make these modifications, then IIEC says ComEd's proposal should be rejected in its entirety. In order to clarify the proposed order's "modifications", IIEC proposes that certain language changes be made in order to clarify and implement those modifications. These proposed language changes are shown on pages 12 and 13 of IIEC exceptions.

b. Enron's Exceptions

In its exceptions, Enron requests that the Commission deny ComEd's petition, consistent with arguments made in its exceptions, or in the alternative, set an appropriate schedule that does not violate the due process rights of the parties to the instant proceeding. Enron further argues that if the Commission does decide to approve an alternative to the NFF, the Commission should require that Edison continue to offer its existing PPO-NFF tariff. (Enron exceptions at 14)

In Enron's view, Edison's proposal requires the Commission to make fundamental legal and policy decisions that will determine the future structure of the electric industry in the State of Illinois using a schedule that was unfair, inappropriate, unrealistic, unworkable, and unheard of in the experience of prior Commission proceedings.

Enron argues that the Commission should not allow Edison to utilize the workshop process as a substitute for the procedural safeguards required by due process. According to Enron, such a practice would undermine the legitimacy of the Commission's decision-making process.

Enron further argues that as desirable as it may be to move to an alternative to the NFF, that movement cannot be undertaken if there are too many uncertainties about the effect of so doing, such as legitimate questions raised in this docket about the liquidity of the markets represented by Altrade and Bloomberg.

c. The AG's Exceptions

In its exceptions and reply to exceptions filed by ComEd, the AG states that the Commission must reject ComEd's request that it approve the implementation of ComEd's market based alternative methodology and associated tariffs. The AG takes exception to the HEPO's failure to issue findings on whether or not ComEd's proposed tariffs under Rider PPO-MI are just and reasonable. The AG asserts that such findings are the minimum findings required by law in order to comply with the Act.

The AG claims that the HEPO fails to explain the "good cause" that warrants the Commission's waiver of 45 day notice rule contained in Section 9-201 of the Act and, therefore, takes exception thereto. The AG takes exception to the fact that the HEPO proposes a decision on the merits in this case, in spite of what its says are numerous misgivings regarding its ability to properly evaluate those merits and explicit acknowledgement of the need for more formal review of the substance of the "so-called" evidence presented in this proceeding.

The AG takes strong exception to the schedule in the instant case, which it asserts illogically, unreasonably, and unlawfully requires parties to submit final arguments to the Hearing Examiner prior to being serviced with testimony that was subsequently entered into the record as evidence. The AG complains that the HEPO failed to rule upon IIEC's Motion, made pursuant to Section 200.640 of the Commissions Rules of Practice, that the Commission take administrative notice of the record in Docket No. 99-0171, which addressed ComEd's prior proposal for an alternative to the Rider PPO-NFF. The AG asserts that its failure to do so deprived the Commission of the opportunity to compare the procedure and record in the instant case with that in the earlier proceeding.

IV. COMMISSION CONCLUSIONS

On March 31, 2000, ComEd filed a petition seeking an order approving the implementation of tariffs attached to its petition by April 27, less than twenty business days after the filing, with these tariffs to become effective May 1, 2000. These tariffs would incorporate a market index based methodology for purposes of determining market value under Section 16-112 of the Act. Among other things, the tariffs provide that peak market values would be determined using forwards transaction prices as listed on Altrade™ and Bloomberg PowerMatch, which Edison characterizes as two real time, online electronic trading exchanges which post forward market prices for the Into ComEd hub. The tariffs would also make certain transitional options available for specified periods of time, such as a "default option" whereby customers would be permitted to continue to pay CTCs based on the current Rider PPO-NFF.

Numerous parties intervened in this proceeding. Some parties, such as PE Services and Nicor Energy, which are ARES, recommend approval of ComEd's proposal subject to certain modifications.~~as filed.~~ Others, such as IIEC, ~~and~~ Enron and the AG, oppose the proposal; among other arguments, they claim the schedule in place in this docket does not allow sufficient time for a meaningful analysis of Edison's proposal. Other parties, such as MEC and CMS Marketing, support the proposal on the condition that certain modifications, to which ComEd has agreed, are made. ~~Another party, NewEnergy, supports ComEd's proposed methodology, but not for periods beyond May, 2001.~~

The petition was filed "pursuant to Article IX and Section 16-112" of the Act. Section 16-112 is entitled "Determination of Market Value." Section 16-112(a) provides in part, "The market value to be used in the calculation of transition charges . . . shall be determined in accordance with either (i) a tariff that has been filed by the electric utility . . . pursuant to Article IX of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event no such tariff has been placed into effect . . . , or in the event such tariff does not establish market values for each of the years specified in the neutral fact finder [NFF] process described in subsections (b) through (h) of this Section, a tariff incorporating the market values resulting from the . . . NFF process set forth in subsections (b) through (h) of this Section."

Section 16-112(m) states, in part, "[t]he Commission may approve or reject, or propose modifications to, any tariff providing for the determination of market value that has been proposed by an electric utility pursuant to subsection (a) of this Section, but shall not have the power to otherwise order the electric utility to implement a modified tariff or to place into effect any tariff for the determination of market value other than one incorporating the neutral fact-finder procedure set forth in this Section." Normally, when the Commission approves a tariff it has the statutory authority to investigate and modify such tariff at a later date. This authority can be particularly important when a tariff is approved on less than 45 days' notice.

With regard to Article IX, which is entitled "Rates," the basic procedures for proposing changes in tariffs affecting rates, charges or practices relating thereto are set out in Section 9-201. Section 9-201(a) of the Act states in part, "[t]he Commission, for good cause shown, may allow changes [in any rate or other charge] without requiring the 45 days' notice provided for, by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published." The Commission notes that requests for "special permission" to modify a tariff on less than 45 days' notice are far from unheard of at the Commission. However, as observed above, when the Commission approves a tariff it normally has the statutory authority to investigate and modify such tariff at a later date, and the Commission believes this authority can be particularly important when a tariff is approved on less than 45 days' notice.

The Commission notes that several parties object to the procedure by which ComEd has attempted to implement its proposal in this proceeding. IIEC, for example, appears to assert that 45 days' notice is always required under Section 9-201 of the Act. While the City acknowledges that 45 days' notice is not necessarily required, it contends that there has not been good cause shown to justify placing the proposed tariffs in effect on an expedited basis. To the extent this issue is before the Commission, the Commission finds, based on the record in this proceeding and subject to the proposed modifications discussed below, that there has been good cause shown to justify the Commission's expedited treatment of this matter.

The Commission is fully aware of the shortcomings attributed to the NFF process. Unfortunately, while ComEd has developed a tariff that has the potential to provide significant benefits to some customers and suppliers, some parties have complained that the time frame proposed by ComEd has provided little time for scrutiny of this tariff by parties and by the Commission. Furthermore, if the tariff is approved as proposed, ComEd says the Commission is precluded by statute from directing ComEd to modify the tariff in the future. Although ComEd says it will provide reports and work with the parties on this issue, the Commission does not find these offers particularly reassuring or convincing in light of ComEd's statement that it is not waiving its right to reject future proposed modifications to Rider PPO-MI.

In any event, having reviewed the record in this case, the Commission finds that ComEd should be authorized to implement its proposed market index based tariff, subject to the modifications set forth below. Edison claims its proposal is superior to the current NFF methodology for purposes of determining market value, in that it more accurately reflects activity in the relevant regional market, provides visible and current price signals, and enables better forecasting of future market values. Further, ComEd presented information intended to show that the increased market values using its proposed method will reduce annual transition charges and increase PPO prices over the summer months, as compared to the NFF approach, better aligning these charges with actual market data. In addition, several parties, including certified ARES, have indicated that ComEd's proposal has merit when compared to market values established using the NFF methodology.

Based on the information presented, the Commission believes it has been shown that ComEd's proposal would likely perform better in these respects than does the NFF methodology. However, the Commission also believes there should be some means in place by which this proposal can be formally reviewed in the future, particularly considering the short review period in this case along with the substantive concerns expressed by other parties, such as IIEC's primary concern regarding the potential "thinness" of the market represented by Altrade and Bloomberg PowerMatch. The concerns raised by several parties regarding the potential for manipulation and the unregulated nature of these internet based markets further support the Commission's conclusion that there should be an additional opportunity for the Commission to formally review the merits of ComEd's proposal and then determine if it should be adopted on a *long-term basis.*

In order to mitigate the concerns of the parties and the Commission described above, the Commission is of the opinion that some modifications to ComEd's proposal would be appropriate. Before identifying the specific modifications, and in connection therewith, the Commission first notes, as explained above, that ComEd is also proposing various transitional provisions in both its tariffs and testimony. For example, under ComEd's proposal, customers will be given the choice to remain with charges that reflect the NFF methodology for the remainder of 2000 or move to those which are set using the market index methodology.

The Commission also notes that CILCO recommends a one-year sunset provision be included in the final order, and that several other parties also propose that a sunset provision be approved. ~~NewEnergy does not support use of ComEd's proposed methodology for periods beyond May, 2001.~~ While IIEC does not support implementation of the ComEd alternative to the NFF even if it were placed into effect for a defined period of time, IIEC says that under any circumstance, the tariff should only *be in effect for a defined period of time not to exceed one year given the uncertainties* associated with any approach.

With regard to the specifics of its proposed modifications to ComEd's proposed Rider PPO-MI, the Commission proposes that this tariff shall cease to be effective at the conclusion of the customer's May, 2001 billing period. The Commission proposes no other modification to this tariff. Subsequent to the entry of an order in this proceeding, ComEd may make an appropriate filing with ~~petition~~ the Commission seeking to extend the applicability of Rider PPO-MI, either in its existing form or some other form. As noted above, ComEd says the Commission is precluded by statute from ordering ComEd to modify any provision of Rider PPO-MI once it is approved. In light of the expedited schedule in this proceeding, and upon consideration of the record in this proceeding and the alleged lack of authority of the Commission to revisit this tariff, the Commission believes that approval of ComEd's proposal without such a modification would not be an appropriate result. This proposed modification will not eliminate any of the purported benefits which ComEd attributes to proposed Rider PPO-MI. In addition, any customer that does not benefit from Rider PPO-MI will have the option to utilize Rider PPO-NFF. If it wishes, ComEd may attempt to demonstrate that Rider PPO-MI should be adopted on a longer term basis in a proceeding with a less restrictive schedule that will provide the opportunity for a more comprehensive review of the proposal.

For purposes of implementing the ComEd proposal, as revised to reflect the Commission's proposed modifications found appropriate above, the Commission directs ComEd to leave in place its existing Rider PPO-NFF, except as modified in the following manner: the paragraph on 1st Revised Sheet No. 149, which allows a customer to switch from Rider PPO-NFF to Rider PPO-MI, may be implemented by ComEd; further, this change may only be implemented if ComEd accepts the Commission's proposed modification to Rider PPO-MI. ComEd's other proposed modifications to existing Rider PPO-NFF, which would preclude customers from selecting that Rider in the future and cause it to have no effect after December 31, 2000, are rejected by the Commission and may not be implemented.

In the event that ComEd accepts the proposed modification to Rider PPO-MI, ComEd is directed to modify Rate CTC, Customer Transition Charge, to comply with that modification as well as the corresponding modification to Rider PPO-NFF that would result.

With regard to ComEd's so-called wholesale offer, ComEd also proposes, as explained more fully above, to offer to all retail electric suppliers serving retail load in ComEd's territory, for a limited time, a wholesale full-requirements service priced at the market values determined using the Commission-approved NFF and market-based methodologies. ComEd says this offer is proposed in order to satisfy certain concerns raised during the workshops, and that energy under this offer would be as firm as native load. According to ComEd, this offer is contingent upon a Commission finding that ComEd's offer in conjunction with its proposed alternative market-based methodology is just and reasonable and would promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Subject to the other determinations made in this order, the Commission hereby finds that ComEd's wholesale offer will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the record herein, is of the opinion and finds that:

(1) ComEd is an Illinois corporation engaged in the business of furnishing electric service in the State of Illinois, and is a public utility as defined in

Section 3-105 of the Public Utilities Act and an electric utility as defined in Section 16-102 of the Act;

(2) the Commission has jurisdiction over ComEd and of the subject matter of this docket;

(3) the statements of fact set forth in the prefatory portions of this Order are supported by the record and are hereby adopted as findings of fact;

(4) ComEd is authorized to file tariffs which contain the Commission's proposed modifications as are described and found appropriate in the "Commission Conclusions" section of this Order above, with such tariffs to be effective May 1, 2000; absent such modifications, ComEd's proposal is rejected and the currently effective tariffs remain in place.

IT IS THEREFORE ORDERED by the Commission that ComEd is authorized to file tariffs consistent with the determinations and findings made in this Order, and containing the proposed modifications found appropriate in this Order, with such tariffs to be effective May 1, 2000; absent such modifications, ComEd's proposal in this docket is rejected and the currently effective tariffs remain in place.

IT IS FURTHER ORDERED that any and all requests or objections not hereto fore specifically ruled upon are hereby deemed disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is final; it is not subject to the Administrative Review Law.

By ~~proposed~~ order of the Commission ~~Hearing Examiner~~ this 26th~~1st~~ day of April, 2000.

Chairman